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September 23, 2003

# E1-288  
RJ

## VIA HAND DELIVERY

Ms. Victoria Rutson  
Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20402-0001

**Re: Finance Docket No. 34284 -- Southwest Gulf Railroad Company --  
Petition for Exemption from 49 U.S.C. § 10901 to Construct and  
Operate a Rail Line In Medina County, Texas**

Dear Ms. Rutson:

On July 18, 2003, Southwest Gulf Railroad ("SGR") submitted a request to your office for a determination that its proposed construction and operation of a rail line in Medina County, TX does not warrant the preparation of an Environmental Impact Statement ("EIS"). Rather, SGR urged in that letter that SEA utilize the discretion provided to it under the Board's rules at 49 CFR § 1105.6 to prepare an Environmental Assessment ("EA"). SGR observed that an EA would be more appropriate for this proceeding given the absence of any significant environmental impacts associated with the proposed action. SGR reaffirms its July 18 letter, and hereby supplements that letter with more recent information that further supports its request.

First, SGR understands that all, or virtually all, of the agencies contacted by SEA or its contractor for comment on the SGR proposal have responded. As was the case at the time that SGR prepared its July 18 letter, none of these agencies has raised any issue that would warrant the preparation of an EIS or identified a specific substantial adverse impact from the proposed construction or operation of the line.

Second, the July 18 letter noted that a final Biological Assessment report, prepared for the benefit of the U.S. Fish and Wildlife Service, was in process. That report, which addresses the quarry site, but also the preferred rail corridor, has now been completed and a copy was submitted to SEA and its contractor on September 2, 2003. As relevant here, the report demonstrates that there are no substantial biological or geological issues raised by the proposed rail line and that the rail project should not jeopardize any threatened or endangered species habitats. Further, the Assessment notes that the rail line is not expected to traverse any

jurisdictional wetlands, and that steps would be taken to avoid any wetlands that may have to be crossed. The U.S. Army Corps of Engineers will be consulted to the extent, if any, necessary.

Third, on August 4, 2003 SGR supplied SEA with its responses to the comments filed by certain persons, some of whom reside in the general area of the proposed line, who oppose the rail line and/or quarry. That letter underscored that the proposed line will not result in any significant traffic issues or exacerbate flooding and that other issues raised by rail line opponents are without merit. Further, as explained in that letter, and underscored in SGR's September 2, 2003 response to SEA's information requests, the fueling/maintenance facility for the quarry and the rail line will not be located on the Edwards Aquifer. Also, the September 2 letter makes clear that that facility's size and nature will not be significantly different regardless of whether or not the rail line is built.

Fourth, SGR is prepared to participate fully in the Section 106 process. SGR understands that certain other interested parties may be consulted as part of the Section 106 process, and SGR looks forward to consulting with SEA and/or the Texas SHPO on cultural and historic resource matters and to responding to any specific questions that may arise. As SGR has previously stated, it does not have any information that would suggest that the line would have a significant impact on any cultural or historic resources. Nonetheless, SGR is prepared, to the extent feasible, to adjust the proposed alignment to avoid any such resources that may be located in the proposed right-of-way.

Fifth, SGR and TexDOT are moving forward toward an understanding with respect to the crossing by the proposed rail line of FM 2676. Further, with respect to the two pipelines referenced in our July 18 letter that need to be crossed, SGR intends to pursue efforts toward reaching an understanding with Duke Energy, the owners of one of those pipelines. SGR has also determined that the second pipeline referenced in the July 18 letter is no longer in operation and therefore will not pose any crossing issues.

Sixth, while SGR is aware of some local opposition to the rail line and quarry project, SGR believes that there has been, and will be, ample opportunity to date for persons to voice their concerns and for those concerns to be addressed by SEA through the EA process. SGR understands that further opportunities for the expression of public views and assessment of issues would be provided through the issuance of a Draft EA and through the Section 106 process. Given the apparent absence of significant environmental impacts, devoting the additional SEA and other resources that would be associated with the preparation of an EIS is not warranted in our judgment.

Finally, SGR notes that on August 21, 2003, the Board denied the petition for revocation of SGR's exemption that was pending at the time of the July 18 letter, thus reaffirming the Board's earlier conditional grant of SGR's exemption petition. In doing so, the Board noted (as relevant here) that the environmental issues raised by the petitioner, Medina County Environmental Action Association (MCEAA), would be considered in either an EA or an EIS,

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and that either process would allow an opportunity for MCEAA to review and comment on the relevant environmental issues it has raised. The Board's decision thus reflects that an EA would offer an appropriate means of addressing those issues. *See also, City of Auburn v. United States*, 154 F.3d 1025, 1032-1033 (9<sup>th</sup> Cir. 1998) (finding that STB met its NEPA obligation to take a "hard look" at environmental issues through preparation of a thorough EA on which public had an opportunity to comment.)

For all of these reasons, SGR reiterates its request that the SEA waive its rules and prepare a Draft EA in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Coburn", with a stylized flourish at the end.

David H. Coburn  
Attorney for Southwest Gulf Railroad  
Company

cc: Ms. Rini Ghosh  
Ms. Jaya Zyman-Ponebshek  
Dr. Darrell Brownlow